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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/645,186	08/24/2000	Donald Fedyk	10360-062001	4310
32836	7590	03/09/2007	EXAMINER	
GUERIN & RODRIGUEZ, LLP			BLOUNT, STEVEN	
5 MOUNT ROYAL AVENUE			ART UNIT	PAPER NUMBER
MOUNT ROYAL OFFICE PARK				
MARLBOROUGH, MA 01752			2616	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/09/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/645,186	FEDYK ET AL.
	Examiner	Art Unit
	Steven Blount	2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 26 December 2006.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1, 2, 5, 8, 13 - 14, 20 - 21, 24, 27, 32 - 33, 39, 40, 43, 46, 51 - 54 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

Continuation of Disposition of Claims: Claims pending in the application are 1, 2, 5, 8, 13 - 14, 20 - 21, 24, 27, 32 - 33, 39, 40, 43, 46, 51 - 54.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 5, 8, 13 – 14, 20 – 21, 24, 27, 32 – 33, 39, 40, 43, 46, and 51 - 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent 5,687,167 to Bertin in view of U.S. patent 5,600,638 to Bertin

Bertin 167 teaches finding the best path through a network wherein the best path has the fewest number of links (ie, hops, see col 11 lines 24+) and then preempting other existing connections in order to allow the new connection to be established on the link wherein the new and old links are assigned individual priority numbers (see col 14 lines 5+). Bertin et also teaches preempting only lower priority requests. See col 14 lines 26+. Bertin does not however teach having an acceptable number of hops as a criteria for path selection (see line 7 of claim 1 and other locations wherein this limitation is claimed). This is taught in Bertin 638. See col 5 lines 50+, col 6 lines 55+ ("path length constraints") and col 11 lines 66+.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided Bertin 167 with a means for determining if the selected path length satisfies a hop count number constraint, in light of the teachings of Bertin 638, in order to insure fair allocation of bandwidth amongst the competing users of the network.

With regard to claim 2, see the rejection above.

With regard to claim 5, see figure 7 in Bertin 167 and note col 4 lines 30+.

With regard to claims 20 – 21, 24, 39 – 40, 43, 51 – 52, see the rejections above.

It is noted that with respect to claims 51 - 52, col 18 lines 55+ of Bertin discuss memory occupation of the topology database, which operates under the control of programmable logic.

With regard to claims 8, 13 – 14, 27, 32 – 33, 46, 53 – 54, See the rejections above and note that in each of the above claims, an MPLS system is claimed. Note further that in Bertin 167, a “Label Swapping” system is taught in one of the embodiments. See col 7 lines 10+. Note that MPLS is one obvious type of “Label Swapping.”

3. Applicants remarks are moot in view of the new grounds of rejection.
4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Blount whose telephone number is 571 - 272 - 3071. The examiner can normally be reached on M-F 9:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Doris To, can be reached on 571 – 272 – 7269 . The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DORIS H. TO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

SB

3/01/07

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